

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

FRANCISCO CRUZ, )

Defendant. )

2:09-CR-456-RLH-RJJ

**ORDER**

(Request to File Late Notice of Appeal-#47)

Before the Court is Defendant Francisco Cruz's letter Request to file a late Notice of Appeal (#47, 47-1), filed November 1, 2010. The Request will be denied.

Defendant Cruz pled guilty to Conspiracy to Distribute a Controlled Substance-Methamphetamine, pursuant to a written plea agreement. According to the plea agreement he sold between 150-500 grams of actual methamphetamine, and possessed a firearm in connection with the crime. His sentence guidelines were calculated on the lower figure of 150 grams. He faced a minimum of 10 years to a maximum of life imprisonment. The sentencing guidelines, as calculated by both the Court and the plea agreement, resulted in a total offense level of 33 and a criminal history category I (no criminal history points), for a guideline range of 135-168 months. He was sentenced to 135 months (the low end of the sentencing guidelines) and judgment entered on June 11, 2010.

Pursuant to the plea agreement, Defendant Cruz waived any right to appeal any sentence that was not higher than the guideline range. At the plea colloquy, and under oath,

1 Defendant Cruz testified that he understood he was waiving his right to appeal, that he had  
2 discussed the waiver with his attorney, and that he was waiving his right to appeal voluntarily.

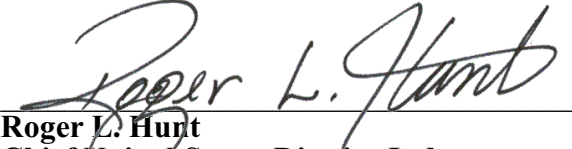
3 The sentence imposed was not only not higher than the guideline range, it was at the  
4 low end of the guideline range. Moreover, the Court reminded Defendant Cruz, at sentencing, that  
5 under the circumstances of the sentence, and his voluntary waiver of his right to appeal under those  
6 circumstances, that he had waived his right to appeal. The Court also advised Defendant Cruz that  
7 if he did have a right to appeal, his notice of appeal must be filed within 14 days after the entry of  
8 the judgment (which occurred that same day). Now, only a week short of five months later, he  
9 seeks permission to file the Notice of Appeal late.

10 At the time of sentencing, his counsel of record, Michael Sanft, moved to withdraw,  
11 but assured the Court that if the Defendant wished to file a Notice of Appeal, he would file one  
12 timely. Defendant Cruz's Request does not assert that Mr. Sanft refused, or failed when asked, to  
13 file a Notice of Appeal. He only states that Mr. Sanft did not file the Notice. Mr. Sanft's reputation  
14 for diligence suggests to the Court that he was not asked to do so by Defendant Cruz.

15 Defendant Cruz voluntarily and knowingly waived his right to appeal his within-the-  
16 guidelines sentence. He was advised of the requirement to file any notice of appeal within 14 days  
17 of the judgment. His Request to file a late appeal provides neither a sufficient basis for his failure to  
18 timely file a Notice of Appeal, nor any basis at all for such an appeal.

19 IT IS THEREFORE ORDERED that Defendant Francisco Cruz's letter Request to  
20 file a late Notice of Appeal (#47, 47-1) is DENIED.

21 Dated: November 4, 2010.

22  
23   
24 **Roger L. Hunt**  
25 **Chief United States District Judge**  
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